

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KIM KARDASHIAN, an
individual; KIMSAPRINCESS
INC., a California Corporation,

Plaintiffs,

vs.

THE GAP, INC., a Delaware
Corporation; OLD NAVY, LLC, a
Delaware Limited Liability
Company; OLD NAVY
(APPAREL), LLC, a California
Limited Liability Company; GAP
(APPAREL), LLC, a California
Limited Liability Company; and
DOES 1 - 10

Defendants.

Case No. CV 11-6568 DSF (MANx)

**PROTECTIVE ORDER ENTERED
PURSUANT TO THE PARTIES'
STIPULATION**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulation for Entry of Protective Order and Stipulated Protective Order [Proposed] ("Stipulation") filed on May 7, 2012, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been substantively modified by the Court's

1 amendment or deletion of paragraphs 1 (footnote 1), 5(b)(footnote2), 7, 8, 10, 11, 15,
2 and 18, and Exhibit A to, the Stipulation.

3 The parties are expressly cautioned that the designation of any information,
4 document, or thing as Confidential, Confidential - Attorney's Eyes Only, Highly
5 Confidential and Private - Attorney's Eyes Only, or other designation(s) used by the
6 parties, does not, in and of itself, create any entitlement to file such information,
7 document, or thing, in whole or in part, under seal. Accordingly, reference to this
8 Protective Order or to the parties' designation of any information, document, or thing
9 as Confidential, Confidential - Attorney's Eyes Only, Highly Confidential and Private
10 - Attorney's Eyes Only, or other designation(s) used by the parties, is wholly
11 insufficient to warrant a filing under seal.

12 There is a strong presumption that the public has a right of access to judicial
13 proceedings and records in civil cases. In connection with non-dispositive motions,
14 good cause must be shown to support a filing under seal. The Court has stricken their
15 good cause statement, because a specific showing of good cause or compelling
16 reasons (see below) for filing under seal, **with proper evidentiary support and legal**
17 **justification**, must be made with respect to each document or item designated as
18 Confidential, Confidential - Attorney's Eyes Only, Highly Confidential and Private -
19 Attorney's Eyes Only, or other designation(s) used by the parties, which a party seeks
20 to have filed under seal. The parties' mere designation of any information, document,
21 or thing as Confidential, Confidential - Attorney's Eyes Only, Highly Confidential
22 and Private - Attorney's Eyes Only, or other designation(s) used by parties, does not --
23 **without the submission of competent evidence, in the form of a declaration or**
24 **declarations, establishing that the material sought to be filed under seal qualifies**
25 **as confidential, privileged, or otherwise protectable** -- constitute good cause.

26 Further, if sealing is requested in connection with a dispositive motion or trial,
27 then compelling reasons, as opposed to good cause, for the sealing must be shown,
28 and the relief sought shall be narrowly tailored to serve the specific interest to be

1 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
2 2010). For each item or type of information, document, or thing sought to be filed or
3 introduced under seal in connection with a dispositive motion or trial, the party
4 seeking protection must articulate compelling reasons, supported by specific facts and
5 legal justification, for the requested sealing order. **Again, competent evidence**
6 **supporting the application to file documents under seal must be provided by**
7 **declaration.**

8 Any document that is not confidential, privileged, or otherwise protectable in its
9 entirety will not be filed under seal if the confidential portions can be redacted. If
10 documents can be redacted, then a redacted version for public viewing, omitting only
11 the confidential, privileged, or otherwise protectable portions of the document, shall
12 be filed. Any application that seeks to file documents under seal in their entirety
13 should include an explanation of why redaction is not feasible.

14 Notwithstanding any other provision of this Protective Order, in the event that
15 this case proceeds to trial, all information, documents, and things discussed or
16 introduced into evidence at trial will become public and available to all members of
17 the public, including the press, unless sufficient cause is shown in advance of trial to
18 proceed otherwise.

19 **THE PARTIES ARE DIRECTED TO REVIEW CAREFULLY AND ACT**
20 **IN COMPLIANCE WITH ALL ORDERS ISSUED BY THE HONORABLE**
21 **DALE S. FISCHER, UNITED STATES DISTRICT JUDGE, INCLUDING**
22 **THOSE APPLICABLE TO PROTECTIVE ORDERS AND FILINGS UNDER**
23 **SEAL.**

24 **TERMS OF PROTECTIVE ORDER**

25
26 1. This Protective Order shall apply to all information, documents,
27 testimony and things designated Tier 1: "*Confidential*," Tier 2: "*Confidential -*
28 *Attorney's Eyes Only*," or Tier 3: "*Highly Confidential and Private - Attorney's*

1 *Eyes Only*” (collectively “Confidential Information”) by the parties or nonparties as
 2 provided in this **Protective Order**.¹

3 **DEFINITION OF CONFIDENTIAL INFORMATION**

4 2. As used herein, "Confidential Information" means, any information,
 5 documents, testimony, and things so designated (including, but not limited to,
 6 documents, things, deposition testimony, responses to interrogatories, responses to
 7 requests for admission, responses to requests for production of documents, deposition
 8 transcripts and deposition videos, deposition exhibits, and other writings or things
 9 produced, given, served, or filed in this Action) as more fully described below, as well
 10 as any information extracted therefrom (including, but not limited to, copies, excerpts,
 11 abstracts, compilations, analyses, summaries, descriptions, testimony, conversations,
 12 or pre-trial presentations by a party or its counsel to the court, as well as all other
 13 forms of information containing, reflecting, or disclosing such information).

14 **DESIGNATION OF CONFIDENTIAL INFORMATION**

15 3. Confidential Information produced or provided in connection with the
 16 Action (including any affidavit, deposition transcript, response to interrogatory or
 17 request for admission, document or thing, in whole or in part), which is deemed to be
 18 Confidential Information by a party or nonparty shall be so identified and labeled as
 19 follows: Tier 1: “*Confidential*,” Tier 2: “*Confidential – Attorney’s Eyes Only*,” or
 20 Tier 3: “*Highly Confidential and Private - Attorney’s Eyes Only*,” as follows:

21 a. A party or nonparty may designate material with the Tier 1:
 22 “*Confidential*” designation only if the party or nonparty, in concurrence with its
 23 counsel and in good faith, deems that a reasonable basis exists for limiting
 24 dissemination of the material under the standards set forth in FRCP 26 and that the
 25 material contains confidential and/or proprietary commercial information that is not
 26 generally available to the public.

27 b. A party or nonparty may designate material with the Tier 1, Tier 2, or
 28

1 **DELETED BY COURT.**

1 Tier 3 designation if the party or nonparty, in concurrence with its counsel and in good
2 faith, deems that disclosure of such material to another person or party would be
3 injurious to the commercial interests of the designating entity under the standards of
4 FRCP 26, or contains highly propriety business or personal information so that the
5 risk of improper use or disclosure to another party outweighs the right of that party to
6 review such information.

7 c. With respect to information that is voluntarily disclosed in these
8 proceedings or disclosed as a result of discovery, the producing party or nonparty may
9 identify and mark Confidential Information at the time when or any time after an
10 affidavit, pleading, or memoranda is served, when or any time after the answer to the
11 interrogatory or request for admission is served, when or any time after a copy of a
12 document is provided, or at the time of the inspection of the premises or thing.
13 However, if the designation is made after service or after any such document is
14 provided, the receiving party will not be deemed to be in violation of this **Protective**
15 **Order** or incur liability by the non-negligent disclosure or use by the receiving party
16 of such Confidential Information in accordance with its original designation in the
17 interim.

18 d. With respect to depositions and deposition transcripts, the designating
19 party or nonparty shall advise opposing counsel and the Court Reporter of the specific
20 pages and exhibits to be maintained as Confidential Information at the deposition or
21 within thirty (30) days after receipt of the transcript. The Court Reporter shall
22 conform all materials in his or her possession to reflect such confidentiality
23 designation and bind (or re-bind if necessary) separately those portions of the
24 testimony and/or exhibits designated as Confidential Information and shall mark the
25 face of the separately bound transcript containing such confidential testimony and/or
26 exhibits, Tier 1: *“Confidential Pursuant To Court Order,”* Tier 2: *“Confidential -*
27 *Attorney’s Eyes Only Pursuant To Court Order,”* or Tier 3: *“Highly Confidential*
28 *and Private - Attorney’s Eyes Only Pursuant To Court Order,”* as appropriate.

1 4. Inadvertent failure to designate Confidential Information as such prior to
2 disclosure, production, or response of such information will not prevent a subsequent
3 confidentiality designation by email or letter promptly sent after discovery of such
4 inadvertent failure, provided that any non-negligent disclosure made by the receiving
5 party prior to receipt of such email or letter shall not be a violation of this **Protective**
6 Order, nor shall the receiving party incur liability for non-negligent use or disclosure
7 of the information prior to the receipt of such letter.

8 **ACCESS TO CONFIDENTIAL INFORMATION**

9 **Access To Tier 1: “Confidential” Information**

10 5. Access, copying, or dissemination of Tier 1: “*Confidential*”
11 information, shall be limited to the following persons:

12 a. Outside litigation counsel of record in the Action and their partners,
13 associates, and their full-time employees (including full-time stenographic, clerical,
14 and paralegal employees), part-time attorneys, and in-house counsel (whose identity
15 has first been disclosed to all parties) whose functions require access to such
16 Confidential Information and who expressly agree to be bound by the terms of this
17 Protective Order;

18 b. Independent experts or consultants for a party, and their full-time clerical
19 employees who are not employees of, or related in any way to, the parties or their
20 affiliates, and whose advice, consultation, and/or testimony are being, or will be used
21 by the parties, in connection with preparation for trial of this action and/or any
22 motions or appeals connected with the action provided, however, that at least ten (10)
23 days prior to the disclosure of Confidential Information under this paragraph: (1) such
24 persons are identified in writing to each party in the action, including their name,
25 address, and current employer or business; (2) the expert or consultant executes
26 Exhibit A; and (3) a copy of Exhibit A is provided to each party in the action. If any
27 party objects to the disclosure of such information to said expert or consultant, that
28 party must serve a written objection within 10 days after receipt of all the information

1 set forth herein and no disclosure of Confidential Information shall occur until all
 2 objections are resolved by the parties or by court order.² The objecting party must
 3 also within 10 days after serving the written objection file a Motion for Protective
 4 Order, which must be made in good faith and upon good grounds. Nothing in this
 5 section shall be interpreted to change the Federal Rules of Civil Procedure regarding
 6 discovery of information in the possession of non-testifying experts and consultants,
 7 and no discovery shall be sought unless there are grounds to believe this Protective
 8 Order has been violated.

9 c. Persons appearing for deposition provided that such persons: (1)
 10 authored or lawfully received such Confidential Information without violating this
 11 **Protective Order**; (2) are established at the deposition as having been knowledgeable
 12 of the contents of such Confidential Information prior to the time of his or her
 13 testimony; or (3) is a current or former employee and/or representative of the party (or
 14 nonparty) that produced the Confidential Information (subject to the right of the
 15 producing party to object and move for a protective order prior to the deponent being
 16 given access to such Confidential Information).

17 d. The Court and its **personnel** (including court reporters);

18 e. Persons employed by each of the parties to this action whose functions
 19 require access to such Confidential Information and who expressly agree to be bound
 20 by the terms of the Protective Order.

21 f. Any other person that the parties hereto agree to in writing.

22 **Access To Tier 2: “Confidential - Attorney’s Eyes Only” Information**

23 6. Access to, and copying and dissemination of, Tier 2: “**Confidential -**
 24 **Attorney’s Eyes Only**” information shall be limited to all persons as set forth in
 25 paragraph 5 **except for** persons set forth in paragraph 5(e), who shall not have such
 26

27 ² If a nonparty’s Confidential Information is involved, that nonparty shall also be
 28 notified and all of the provisions of this paragraph that apply to parties shall apply to
any nonparty who or which agrees to be bound by the provisions of this
Protective Order or the provisions of this paragraph.

1 access hereunder.

2 **Access To Tier 3: “Highly Confidential and Private - Attorney’s Eyes Only”**
 3 **Information**

4 7. Confidential information designated as Tier 3: “*Highly Confidential*
 5 *and Private - Attorney’s Eyes Only*” information shall be disclosed under the terms of
 6 this Protective Order only to: (a) outside counsel of record and designated in-house
 7 counsel (but not to their employees or staff members or anyone else)³ identified to the
 8 producing party; (b) designated expert witnesses and consultants under the conditions
 9 set forth in paragraph 5(b) (but not to their employees or staff members or anyone
 10 else); (c) the Court and its **personnel** [. . .]; and (d) persons at deposition under the
 11 conditions set forth in paragraph 5(c).

12 To the extent possible, any Confidential Information designated under this Tier
 13 shall also be provided in redacted form using a designation of Tier 2 or below.

14 **USE AND HANDLING OF CONFIDENTIAL INFORMATION**

15 8. All Confidential Information is provided solely for the purpose of this
 16 Action, and **receiving parties** may disclose and use such information only in
 17 accordance with this Protective Order for this Action. Confidential Information may
 18 not be used for any other purpose, except by leave of court on motion with notice to
 19 all interested parties.

20 9. Subject to the limitations and requirements of this Protective Order,
 21 Confidential Information may be used during discovery, in connection with any
 22 motion, at the trial and/or appeal of this action, or for any other purpose as this Court
 23 may allow after notice to all parties.

24 10. No copy of any deposition transcript or any portion thereof designated as
 25

26 ³ To the extent outside counsel of record require limited support staff to assist in
 27 matters such as preparation of briefs, such outside counsel may identify one support
 28 staff member to so assist provided that person has agreed in writing to be bound to
 this Protective Order and the identity has been disclosed to each party appearing in the
 action.

1 Confidential Information shall be prepared or furnished by the court reporter to any
2 person other than to the outside counsel of record for the parties. Neither the original
3 nor any copy of any transcript of any deposition taken in this action shall be filed in
4 Court until the time period has elapsed for the designation of portions of the transcript
5 as Confidential Information, unless the transcript and all papers referencing the
6 transcript are filed under seal. If given a confidentiality classification, the confidential
7 portion of the transcript shall be retained by said counsel and, when used in this
8 action, **shall be filed with an application to file such materials** under seal in
9 accordance with paragraph 12 below unless otherwise agreed upon by the parties.

10 11. In the event that a party witness or nonparty witness (who has agreed to
11 be bound **by** this Protective Order) to whom Confidential Information has been
12 disclosed receives a discovery request, subpoena, order, or other form of compulsory
13 process requiring that it (the "subpoenaed party") produce information, documents,
14 things, or other materials that have been designated as Confidential Information, the
15 subpoenaed party shall promptly notify the designating party of the demand. If the
16 designating party elects to resist production of the materials, it shall promptly so
17 notify the subpoenaed party and the latter shall cooperate in affording the designating
18 party a reasonable opportunity to oppose or limit production of the materials; provided
19 that the designating party shall bear all expenses, including attorneys' fees, incurred by
20 the subpoenaed party in connection therewith. **Nothing in these provisions should**
21 **be construed as authorizing or encouraging a subpoenaed party to disobey a**
22 **lawful directive from another court.**

23 12. To the extent Confidential Information is included in any pleading, paper,
24 or other document filed with the Court or presented to the Court in some other
25 fashion, such Confidential Information shall be filed and/or presented under seal by
26 the party filing or presenting such Confidential Information in compliance with this
27 Court's Orders and Local Rule 79-5.

28 13. This Protective Order has no effect upon, and shall not apply to, a party's

1 use or disclosure of its own Confidential Information for any purpose.

2 14. Nothing contained herein shall impose any restrictions on the use or
3 disclosure by the receiving party of information that: (a) was already known to such
4 party by lawful means; (b) is or becomes publicly known through no fault of the
5 receiving party; or (c) is rightfully received by the receiving party.

6 15. For any video deposition of plaintiff Kim Kardashian there shall be only
7 one video master which shall be provided to counsel of record for Plaintiff at the close
8 of any deposition session, plus one additional copy which will be provided to counsel
9 of record for Defendants at that time. The court reporter shall be required to **read and**
10 **sign an agreement to be bound by this Protective Order**, and shall not take or retain
11 any copies of any deposition video of plaintiff or portions thereof from the deposition
12 site. No other copies of any deposition video shall be made except by agreement
13 between the parties or by order of the Court.

14 Any deposition video or deposition transcript of plaintiff or portion thereof: (1)
15 shall be used for the sole and exclusive purpose of this litigation and not for any other
16 purpose whatsoever; (2) shall not be uploaded to any server or computer distribution
17 or multiparty or multi-terminal viewing system except by agreement of the parties or
18 by order of the Court; (3) shall not be provided, disclosed, or sold to the press or any
19 third party; and (4) may not be disseminated, uploaded, or posted on the internet,
20 except outside counsel of record is permitted to store a password protected copy on its
21 office computer server and edit such copy (with the assistance of one staff member of
22 the law firm who is identified to all parties and has agreed in writing to abide by this
23 Protective Order) and store such edits in password protected files for use at hearings
24 or trial in accordance with this Protective Order. Further, the parties are required to
25 meet and confer in good faith as trial approaches to evaluate whether the assistance of
26 more than one staff member or trial consultant is reasonably required to aid in the
27 editing process.
28

CHALLENGES TO DESIGNATION

16. This Protective Order shall not foreclose any of the parties from moving this Court for an order that designated materials are not within the scope of protection afforded by FRCP Rule 26 or that the asserted Confidential Information is not properly classified and, therefore, should be re-designated. The party designating the material shall have the burden of proving that the designation is proper. In addition, the Court may award reasonable attorney's fees and costs to any party that successfully moves to change the designation of any document if the Court determines that the original designation was made in bad faith or in violation of this **Protective Order**.

FUTHER PROTECTIVE ORDERS

17. This Protective Order shall not prevent any of the parties or nonparty witnesses from applying to the Court for relief herefrom, or for a modification of this Protective Order, for further or additional protective orders, or from agreeing between themselves to modification of this Protective Order, subject to the approval of the Court.

CONCLUSION OF THE ACTION

18. Within ninety (90) days after final termination of this Action, receiving counsel shall return all copies and samples of Confidential Information in its possession, custody, or control to counsel for the party who has provided them or certify destruction thereof, except, however, counsel may retain one copy of any pleading, interrogatory response, deposition transcript, or other document containing Tier 1: "**Confidential**" or Tier 2: "**Confidential - Attorney's Eyes Only**" information, subject to paragraph 19 below. No Tier 3: "**Highly Confidential and Private - Attorney's Eyes Only**" Confidential Information shall be retained.

19. This Protective Order shall survive the final determination of this action and shall remain in full force and effect after the conclusion of all of the proceedings herein in order to provide the Court with ancillary jurisdiction to enforce its terms and

1 to ensure compliance herewith.

2 **NONPARTIES**

3 20. Nonparties may produce information and documents that will be
4 governed by the terms of this **Protective** Order by agreeing in writing to be bound by
5 the terms of this **Protective** Order and following the procedure for designating
6 Confidential Information described elsewhere in this **Protective** Order.

7
8 **IT IS SO ORDERED.**

9 DATED: May 24, 2012

Margaret A. Nagle

MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A
CONFIDENTIALITY AGREEMENT FOR EXPERTS AND CONSULTANTS

UNDERTAKING OF _____:

I, _____, state that:

1. My address is _____.

2. My present employer and businesses affiliations are:

_____.

3. My occupation is _____.

4. I have received a copy of the Protective Order in this action signed by the United States **Magistrate** Judge.

5. I have read and understand all of the provisions of the Protective Order.

6. I agree to hold in confidence and will not disclose to anyone not qualified under the Protective Order or use any Confidential Information which is disclosed to me except as permitted by that **Protective** Order. I also agree to notify any stenographic, clerical, or technical personnel who are required to assist me of the terms of this Protective Order and of its binding effect on them and me.

7. Having read the Protective Order, I will comply with all its provisions, including those not explicitly set out in this signed undertaking.

8. I agree to return all Confidential Information which comes into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained. I will do this immediately upon receiving a request from the counsel for the party for whom I was employed or retained or, in any event, by no later than thirty days after Action between the parties has ended.

[continued on the next page]

1 9. I hereby submit to the jurisdiction of the United States District Court for the
2 Central District of California for the purpose of enforcement of this Protective Order.

3 DATED: _____

4 (Signature)

5
6 ADDRESS WHERE SIGNED: _____

7 _____

8 _____

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11 PRINTED NAME: _____

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